

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TERESA TITUS, as an individual and as a representative of the class,

Plaintiff,

V.

ZESTFINANCE, INC., BLUECHIP
FINANCIAL, and DOUGLAS MERRILL,

Defendants.

CASE NO. 18-5373 RJB

ORDER ON DEFENDANTS'
MOTIONS TO STAY
PROCEEDINGS AND FOR RELIEF
FROM CASE SCHEDULING
DEADLINES

THIS MATTER comes before the Court on the Defendants' Motion to Stay Proceedings Pending Appeal of Order Denying Arbitration (Dkt. 57), Defendants' Motion for Relief from Scheduling Deadlines (Dkt. 58), and the parties' joint Stipulation Establishing Class Certification Motion Deadlines (Dkt. 59). The Court has considered the pleadings filed regarding the motions, and the remaining file.

This putative class action arises from a series of loans Defendants made to Plaintiff, which Plaintiff alleges carry triple digit interest rates (sometimes exceeding 400%), that violate

1 Washington State usury law, RCW 19.52.030, the Washington Consumer Protection Act, RCW
2 19.86.020, *et seq.* (“WCPA”), and unjustly enriches Defendants. Dkt. 1. Plaintiff also makes a
3 claim against Defendants for violation of Racketeer Influenced Corrupt Organizations Act, 18
4 U.S.C. § 1962, *et seq.* (“RICO”), asserting that the Defendants “associated for the common
5 purpose of profiting off of the collection [of] unlawful debt by offering and collecting on loans to
6 consumers throughout the United States . . .” Dkt. 1, at 18.

7 On October 18, 2018, the Defendants’ motion to compel arbitration was denied. Dkt. 48.
8 The Defendants filed notices of appeal regarding the order denying the motion to compel. Dkts.
9 55 and 56.

10 The Defendants now move to stay the case pending the appeal (Dkt. 57) and for relief
11 from scheduling deadlines (Dkt. 58). The Plaintiff opposes these motions. Dkts. 64 and 66. The
12 parties also submitted a joint proposed deadline for briefing on whether a class should be
13 certified in this case. Dkt. 59. For the reasons provided below, the motion for a stay (Dkt. 58)
14 should be granted, the motion for relief from scheduling deadlines (Dkt. 58) and the parties’
15 proposed deadline for briefing on whether a class should be certified in this case (Dkt. 59) should
16 be stricken as moot.

17 The background facts are in the October 18, 2018 Order on Defendants’ Motion to
18 Compel (Dkt. 58) and are adopted here by reference.

19 **DISCUSSION**

20 **A. MOTION TO STAY**

21 “A stay is not a matter of right. It is instead an exercise of judicial discretion that is
22 dependent upon the circumstances of the particular case.” *Lair v. Bullock*, 697 F.3d 1200, 1203
23 (9th Cir. 2012)(*internal quotation marks and citations omitted*). In deciding whether to issue a
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1 stay in the Ninth Circuit, courts consider four questions: “(1) whether the stay applicant has
2 made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will
3 be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the
4 other parties interested in the proceeding; and (4) where the public interest lies.” *Lair v. Bullock*,
5 697 F.3d 1200, 1203 (9th Cir. 2012) (*quoting Nken v. Holder*, 556 U.S. 418, 434 (2009)). “The
6 first two factors are the most critical and the last two steps are reached once an applicant satisfies
7 the first two factors.” *Id.* (*internal quotation marks and citations omitted*).

8 1. Strong Showing of Likelihood of Success on the Merits

9 The parties dispute the degree of success the Defendants must show to prevail on this
10 factor. The Ninth Circuit acknowledges that there is some uncertainty regarding the degree of
11 success a party seeking a stay must show. *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir.
12 2011). It explains:

13 There are many ways to articulate the minimum quantum of likely success
14 necessary to justify a stay—be it a ‘reasonable probability’ or ‘fair prospect,’ . . .
15 [or] ‘a substantial case on the merits,’ . . . or, . . . that ‘serious legal questions are
16 raised.’ We think these formulations are essentially interchangeable, and that none
of them demand a showing that success is more likely than not. Regardless of
how one expresses the requirement, the idea is that in order to justify a stay, a
petitioner must show, at a minimum, that she has a substantial case for relief on
the merits.

17 *Id.*, at 967–68 (*internal citations omitted*).

18 The Defendants here have shown “at a minimum, that [they have] a substantial case for
19 relief on the merits.” The decision on whether to order arbitration was a close one. This factor
20 weighs in favor of Defendants.

21 2. Irreparable Injury Absent a Stay

22 The Defendants point out that they will be injured absent a stay. They point out that they
23 will be forced to engage in extensive discovery (especially if this case is certified as a class
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1 action) that will be significantly unnecessary if their motion to compel arbitration is granted.
2 This factor weighs in favor of Defendants.

3 3. Substantial Injury to Other Parties Interested in the Proceeding

4 The Plaintiff points out that she will continue to have to pay what, in her view, is an
5 illegal loan, if a stay is granted. She asserts that other potential members of the class are also
6 injured by staying the case. She maintains that they will also have to pay on their illegal loans,
7 and that the individuals who take these types of loans are often people of little means. While the
8 Plaintiff's and other potential parties to the litigation are in a rough spot, it is not clear that
9 granting a stay will materially change this situation quickly. This factor weighs slightly in favor
10 of the Plaintiff.

11 4. Public Interest

12 There is a strong public policy in favor of arbitration. There is a strong policy in
13 Washington against usurious loans. This factor is neutral on whether to grant a stay.

14 5. Conclusion on Motion for a Stay

15 The Defendants' Motion to Stay Proceedings Pending Appeal of Order Denying
16 Arbitration (Dkt. 57) should be granted. The Defendants have demonstrated that they
17 have a "substantial case for relief on the merits" of their appeal. They have shown that,
18 absent a stay, they would be forced to engage in (at least some) unnecessary discovery if
19 the Ninth Circuit overturns this Court decision on the motion to compel. While the
20 Plaintiff has shown that she and the other potential class members will be injured absent a
21 stay, on balance, a stay is warranted. The motion for a stay should be granted.

22 **B. MOTIONS RELATING TO CASE SCHEDULE AND SETTING OF NEW
23 DEADLINE FOR STATUS REPORT**

The Defendants' Motion for Relief from Scheduling Deadlines (Dkt. 58), and the parties' joint Stipulation Establishing Class Certification Motion Deadlines (Dkt. 59) should be stricken as moot. The parties should be ordered to file a status report with this Court within two weeks from the date the Ninth Circuit Court of Appeals issues a decision or, in any event, by August 9, 2019.

ORDER

It is **ORDERED** that,

- Defendants' Motion to Stay Proceedings Pending Appeal of Order Denying Arbitration (Dkt. 57) **IS GRANTED**;
 - **THIS CASE IS STAYED**;
 - Defendants' Motion for Relief from Scheduling Deadlines (Dkt. 58) and the parties' joint Stipulation Establishing Class Certification Motion Deadlines (Dkt. 59) **ARE STRICKEN AS MOOT**; and
 - The parties **SHALL FILE** a status report with this Court within two weeks from the date the Ninth Circuit Court of Appeals issues a decision or, in any event, by **August 9, 2019**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 19th day of November, 2018.

Robert F. Bryan

ROBERT J. BRYAN
United States District Judge